

Farm Credit Administration

§614.4335

within the lending limits established in subpart J of this part.

(2) The amount of the loan subject to the recourse agreement shall be considered a loan sold with recourse for the purpose of computing permanent capital ratios.

(h) *Transactions through agents.* Transactions pertaining to purchases of loans, including the judgement on creditworthiness, may be performed through an agent, provided that:

(1) The institution establishes the necessary criteria in a written agency agreement that outlines, at a minimum, the scope of the agency relationship and obligates the agent to comply with the institution's underwriting standards;

(2) The institution periodically reviews the agency relationship to determine if the agent's actions are in the best interest of the institution;

(3) The agent must be independent of the seller or intermediate broker in the transaction; and

(4) If an association's funding bank serves as its agent, the agency agreement must provide that:

(i) The association can terminate the agreement upon no more than 60 days notice to the bank;

(ii) The association may, in its discretion, require the bank to purchase from the association any interest in a loan that the association determines does not comply with the terms of the agency agreement or the association's loan underwriting standards.

[57 FR 38247, Aug. 24, 1992, as amended at 58 FR 40321, July 28, 1993; 62 FR 51015, Sept. 30, 1997]

§614.4330 Loan participations.

Agreements to purchase or sell a participation interest shall be subject to the provisions of §614.4325 of this subpart, and, in addition, shall satisfy the requirements of this section.

(a) *Participation agreements.* Agreements to purchase or sell a participation interest in a loan shall, in addition to meeting the requirements of §614.4325(d) of this subpart, at a minimum:

(1) Define the duties and responsibilities of the participating institution and the lead lender, and/or the servicing

institution, if different from the lead lender.

(2) Provide for loan servicing and monitoring of the servicer;

(3) Set forth authorization and conditions for action in the event of borrower distress or default;

(4) Provide for sharing of risk;

(5) Set forth conditions for the offering and acceptance of the loan participation and termination of the agreement;

(6) Provide for sharing of fees, interest charges, and costs between participating institutions;

(7) Provide for a method of resolution of disagreements arising under the agreement between two or more institutions;

(8) Specify whether the contract is assignable by either party; and

(9) Provide for the issuance of certificates evidencing an undivided interest in a loan.

(b) *Retention requirement.* No participation interest may be purchased from an institution that is not a Farm Credit System institution unless the servicing institution has an ownership interest in the principal amount equal to the lesser of 10 percent of the principal amount or such lesser amount as represents the servicing institution's lending limit, which ownership interest cannot be assigned separately from the servicing rights.

(c) *Intrasystem participations.* Loans participated between or among Farm Credit System institutions shall meet the borrower eligibility, membership, loan term, loan amount, loan security, and stock purchase requirements of the originating lender.

§614.4335 Borrower stock requirements.

(a) As a condition of obtaining a loan from or through a Farm Credit System institution, including loans originated for sale to other lenders, a borrower shall meet the institution's minimum stock purchase requirements.

(b) Borrower stock may be retired only if the institution meets its minimum permanent capital standards and only in accordance with paragraphs (b)(1) or (b)(2) of this section.

(1) When a loan is sold to a party that is not a certified agricultural mortgage

marketing facility under title VIII of the Act:

(i) Subject to the requirements of paragraph (d) of this section, borrower stock may be retired if the entire loan is sold without recourse.

(ii) Borrower stock may not be retired when the entire loan is sold with recourse.

(iii) When an interest in a loan is sold without recourse, or an interest is retained that is not a subordinated interest, a proportionate amount of borrower stock may be retired, but in no event may stock be retired below the institution's minimum stock purchase requirement for the interest retained.

(2) When a loan or an interest therein is sold to a certified agricultural mortgage marketing facility under title VIII of the Act, the stock may be retired; but, in no event may stock be retired below the institution's minimum stock purchase requirement for the portion retained.

(c) If an institution repurchases a loan on which the stock has been retired, the borrower shall be required to repurchase stock in the amount of the minimum stock purchase requirement.

(d) When the loan is sold without recourse to another Farm Credit System institution pursuant to paragraph (b)(1)(i) of this section, the borrower may elect to hold stock in either the selling or purchasing institution.

EFFECTIVE DATE NOTE: At 62 FR 63646, Dec. 2, 1997, § 614.4335 was revised, effective upon the expiration of 30 days after publication in the FEDERAL REGISTER during which either or both houses of Congress are in session. Notice of the effective date will be published in the FEDERAL REGISTER. For the convenience of the user, the revised text is set forth as follows:

§ 614.4335 Borrower stock requirements.

(a) *In general.* Except as provided in paragraph (b) of this section, a borrower shall meet the minimum borrower stock purchase requirements as a condition of obtaining a loan.

(b) *Loans designated for sale into a secondary market.* (1) An institution's bylaws may provide that the institution's minimum borrower stock purchase requirements do not apply if a loan is designated, at the time it is made, for sale into a secondary market.

(2) If a loan designated for sale under paragraph (b) of this section is not sold into a secondary market during the 180-day period that begins on the date of designation, the

institution's minimum borrower stock purchase requirements shall apply.

(c) *Retirement of borrower stock.* (1) *In general.* Borrower stock may be retired only if the institution meets the minimum permanent capital requirements imposed by the FCA pursuant to the Act or regulations and, except as provided in paragraph (c)(2) of this section, in accordance with the following:

(i) Borrower stock may be retired if the entire loan is sold without recourse, provided that when the loan is sold without recourse to another Farm Credit System institution, the borrower may elect to hold stock in either the selling or purchasing institution.

(ii) Borrower stock may not be retired when the entire loan is sold with recourse.

(iii) When an interest in a loan is sold without recourse, a proportionate amount of borrower stock may be retired, but in no event may stock be retired below the institution's minimum stock purchase requirements for the interest retained.

(iv) If an institution repurchases a loan on which the stock has been retired, the borrower shall be required to repurchase stock in the amount of the minimum stock purchase requirement.

(2) *Loans sold into a secondary market.* An institution's bylaws may provide that all outstanding voting stock held by a borrower with respect to a loan shall be retired when the loan is sold into a secondary market.

(d) *Applicability.* In the case of a loan sold into a secondary market under title VIII of the Act, paragraphs (b)(1) and (c)(2) of this section apply regardless of whether the institution retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

[62 FR 63646, Dec. 2, 1997]

§ 614.4336 Borrower rights.

(a) Each institution that contemplates selling a loan or an interest therein that is subject to the borrower rights provisions of title IV of the Act shall either:

(1) For loans intended for sale to a certified agricultural mortgage marketing facility pursuant to title VIII of the Act, comply with the requirements of § 614.4367(b) of this part; or

(2) For loans intended for sale to institutions that are neither Farm Credit System institutions nor certified agricultural mortgage marketing facilities under title VIII of the Act, comply with one of the following two requirements:

(i) Include provisions in the contract with the borrower, or a written modification thereto, that ensure that the